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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD GENE GILL,

Defendant and Appellant.

C038984

(Super. Ct. No. CR01-608)

In January 2001, while on probation for earlier felony and misdemeanor convictions in two non-drug-related cases (Yolo County case Nos. CR00-2546 and CR00-1552), defendant Ronald Gene Gill was charged with one count of possessing methamphetamine (case No. CR01-608). (Health & Saf. Code, § 11377, subd. (a).) The information alleged the possession offense occurred on January 27, 2001. In May 2001 defendant pleaded guilty to the possession charge and admitted violating his probation in exchange for a promise of probation on the possession charge with no state prison at the outset and reinstatement of probation on the previous convictions.

The probation report recommended defendant serve 150 days in jail as a condition of probation on the possession charge. At the sentencing hearing on July 30, 2001, defense counsel argued defendant was eligible for sentencing under Proposition 36 (Pen. Code, §§ 1210, 1210.1), which precludes "impos[ing] incarceration as an additional condition of probation." (Pen. Code, § 1210.1, subd. (a).) The prosecutor argued that Proposition 36 did not apply to defendant, and even if it did, defendant was still subject to incarceration for the violations of probation in case Nos. CR00-2546 and CR00-1552. The sentencing court concluded Proposition 36 applies only to offenses committed after July 1, 2001. Accordingly, the court sentenced defendant without regard to Proposition 36. In case No. CR01-608 (the possession conviction), the court suspended imposition of sentence and granted defendant probation on the condition he serve 180 days in jail. In case No. CR00-2546 (defendant's earlier felony conviction), the court reinstated and extended defendant's probation and ordered that, as a condition of that probation, he comply with all the terms and conditions of his probation on the possession conviction. In case No. CR00-1552 (defendant's earlier misdemeanor conviction), the court ordered defendant to serve 26 days in jail but gave him credit for time served.

On appeal from the order granting him probation in case No. CR01-608, defendant contends that because he was sentenced after July 1, 2001, he was entitled to be sentenced under Proposition 36 and, therefore, the court erred in imposing a

jail term as a condition of his probation on the possession conviction. The People agree that defendant is eligible for sentencing under Proposition 36 but contend that Proposition 36 does not bar the sentencing court on remand from imposing a term of incarceration for defendant's violation of his probation in the earlier, non-drug-related cases.

"Proposition 36, which was approved by the voters at the November 7, 2000 General Election, effected a change in the sentencing law so that a defendant convicted of a nonviolent drug possession offense is generally sentenced to probation, instead of state prison or county jail, with the condition of completion of a drug treatment program." (*In re DeLong* (2001) 93 Cal.App.4th 562, 566.) "[A] defendant found guilty before the initiative's effective date of July 1, 2001, but not sentenced until afterwards, was *convicted* after the effective date and comes within the ambit of Proposition 36." (*Id.* at p. 564.) "[A]n order granting probation and suspending imposition of sentence is a form of sentencing." (*Id.* at p. 571.)

Because defendant was granted probation on the possession conviction on July 30, 2001, *after* the effective date of Proposition 36, he was entitled to the benefits of that proposition. Accordingly, this matter -- case No. CR01-608 -- must be remanded for resentencing. Because the earlier, non-drug-related cases are not before us, we express no opinion as to the proper disposition of those cases.

DISPOSITION

The order granting probation in case No. CR01-608 is reversed and the case is remanded for resentencing under Proposition 36.

RAYE , J.

We concur:

SCOTLAND , P.J.

BLEASE , J.